

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
AUGUST 12, 2002
HUGHES AUDITORIUM
6:30 P.M.

CALL TO ORDER

Mayor Jennings called the meeting to order at 6:57 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Jeffrey Jennings, Mayor Pro Tem Ken Kearsley, Councilmembers Sharon Barovsky, Joan House and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Julia James, Administrative Services Director; Drew Purvis, Planning Director; Scott Albright, Senior Planner; Sharyl Beebe, Associate Planner; Claudio Sanchez, Associate Civil Engineer; Kim Nilsson, Solid Waste Coordinator; Barbara Cameron, Grants Writer; and Lisa Pope, City Clerk

FLAG SALUTE

Lloyd Ahearn led the Pledge of Allegiance.

CLOSED SESSION REPORT

City Attorney Hogin reported that the Council met in closed session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Antario v. City of Malibu
Los Angeles County Superior Court Case No. BC253990
2. Brown v. City of Malibu
Ventura County Superior Court Case No. CIV212554
3. Cher v. City of Malibu
Los Angeles County Superior Court Case No. SS10632
4. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
5. City of Malibu v. California Coastal Commission
Los Angeles County Superior Court Case No. BC230410

6. City of Malibu v. Santa Monica Mountains Conservancy (Streisand Center)
Ventura County Superior Court Case No. CIV193900
7. Coffman v. City of Malibu
Los Angeles County Superior Court Case No. BC246067
8. Darian v. Accent Builders et al.
United States District Court Case No. 00-10255-FMC(JWJ)
9. Keach v. City of Malibu
Los Angeles County Superior Court Case No. SS009723
10. Levenson v. City of Malibu et al.
Los Angeles County Superior Court Case No. SC059037
11. Marine Forest Society v. California Coastal Commission Case No. 00AS00567
(Sacramento Superior Court) (Amicus)
12. Nese v. City of Malibu
Los Angeles County Superior Court Case No. SC070775
13. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
14. Sierra Club v. City of Malibu
Los Angeles County Superior Court Case No. BS064912
15. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BC255025
16. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
17. Taxpayers for Livable Communities; Jay Liebig v. City of Malibu
Los Angeles County Superior Court Case No. BC258432
18. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
19. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794

Initiation of Litigation pursuant to Government Code Section 54956.9(c):

20. Number of cases: 2

Personnel matters pursuant to Government Code Section 54957:

19. Public Employee Performance Evaluation

Title: City Treasurer

The City Attorney stated the Council discussed several but not all items on the posted agenda and took no reportable action. She stated the Council met under Government Code Section 54957 to perform its evaluation of the City Treasurer and took no reportable action.

APPROVAL OF AGENDA

Mayor Jennings stated staff was recommending continuance of Item 4.D.

City Attorney Hogin suggested the matter be continued to September 23, 2002 based on correspondence regarding possible recipients of the 57 acres of open space.

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the agenda with Item 4.D. continued to September 23, 2002. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was posted on August 2, 2002.

ITEM 1 CEREMONIAL/PRESENTATIONS

ITEM 2A. PUBLIC COMMENTS

Hil Covington, Save Our Views, expressed concern over dense trees destroying views. He suggested a view preservation ordinance be adopted.

Valerie Sklarevsky discussed the use of pesticides in Malibu. She suggested Malibu monitor and test for poisons in Malibu Creek.

Peg Butler addressed the Council in opposition to the use of pesticides in Malibu. She suggested the Council adopt guidelines to require safe eradication of unwanted plants and animals.

Mary Wright, Wright Way Organic Resource Center, discussed the use of "Round Up" pesticide in Malibu. She discussed the danger to the watersheds, Malibu Lagoon, Pacific Ocean and small mammals including children. She requested Malibu Creek be tested.

Eric Lloyd Wright discussed the use of pesticides, herbicides, and organic weed killers. He discussed the purpose of Wright Way Organic Resource Center and the need to create a sustainable society.

Lloyd Ahearn discussed the Coastal Commission hearings on the LCP. He requested a status report on the Coastal Commission and City actions. He questioned the timing of the hearings in September.

Eleanor Bertonneau complained about the construction of a garage on Grasswood Avenue. She stated it was an inappropriate development in a residential neighborhood. She urged the Council to review the matter and halt construction.

Sam Hall Kaplan expressed outrage to the 28-car garage on Grasswood Avenue. He stated the Coastal Commission would be investigating the project.

John Mazza thanked Councilmember Stern and Mayor Pro Tem Kearsley for assisting with the Paradise Cove pollution problem. He suggested gross violations of the Municipal Code be handled expeditiously.

George Patton addressed the Council regarding the use of toxic substances in landscaping. He discussed the dangers of using herbicides.

Mark Olson, Southern California Edison, discussed undergrounding of electrical poles on Pacific Coast Highway. He congratulated the City on its new location.

Norm Haynie discussed criticisms by the California Coastal Commission for the City's unwillingness to share its access to the coast. He discussed a private beach recently made public by the City of Malibu.

Margaret Cole suggested the Civic Center properties include an arboretum.

Nidia Birenbaum deferred her time to Sam Birenbaum.

Sam Birenbaum discussed dogs on the beaches and urged the City to enforce the laws.

Curtis Horton discussed the development on Grasswood Avenue. He stated the project should immediately be stopped.

Bob Gillespie discussed walking dogs on the beach and stated the majority of the property owners were responsible. He questioned the frequency of trash collection on Pacific Coast Highway. He suggested an adopt-a-highway program from Heathercliff to Trancas. He discussed the dog beach in Santa Barbara.

B. COUNCIL COMMENTS

Councilmember House expressed interest in exploring the options regarding view protection. She suggested the Council be provided with additional information regarding the use of pesticides. She discussed the Public Works audit and suggested it be reviewed by the Administration and Finance Subcommittee. She asked the status of the Sheriff's Department audit. City Manager Lichtig stated the draft was received but not yet reviewed by staff. Councilmember House requested the budget be compared to the Council's direction.

Mayor Pro Tem Kearsley asked if the City used herbicides at City facilities. City Manager Lichtig stated she would review the matter and report back to the Council. Mayor Pro Tem Kearsley indicated opposition to the use of "Round Up." He indicated support for a view protection ordinance. City Manager Lichtig suggested the matter be discussed at the next Quarterly City Council meeting. Mayor Pro Tem Kearsley requested information on weddings at Paradise Cove. City Manager Lichtig explained that permitted events were allowed to continue but future events were prohibited. Planning Director Purvis explained that six events per year were allowed on commercially zone properties. Mayor Pro Tem Kearsley congratulated staff on the move to City Hall's new location at 23815 Stuart Ranch Road. He discussed low frequency testing and urged residents to contact their Senator and Congressman to stop sonar testing or at least require and environmental impact report.

Councilmember Stern expressed interest in a view protection ordinance. He commended Code Enforcement Officer Sumpter for getting the City involved in mediation services. He commended staff on the City Hall move.

Councilmember Barovsky discussed the laws regarding the development on Grasswood. She indicated support for a view protection ordinance.

Mayor Jennings discussed cell site applications and indicated he would forward information to the City Attorney. He suggested a view protection ordinance be brought back at the Quarterly meeting in October. He stated wastewater treatment system violations were staff's first priority. He discussed the development on Grasswood Avenue.

ITEM 3 CONSENT CALENDAR

Councilmember Barovsky pulled Item 3.B.9.

MOTION Mayor Pro Tem Kearsley moved and Councilmember Barovsky seconded a motion to approve the Consent Calendar with the exception of Item 3.B.9. The motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Staff recommendation: 1) To allow and approve warrant demand numbers 19724 – 19731, 19733 – 19745, 19747 – 19749, 19751 and 19753 through 19791 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 265 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, including payroll checks, in a total amount of \$511,126.96 including ADP payroll voucher numbers 21331207-1231 and 2) To allow and approve warrant demand numbers 19732, 19746, 19750, 19752, 19792 – 19867 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 266 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, including payroll checks, in a total amount of \$372,165.61.

3. Re-affirm the State of Local Emergency Declared by the Director of Emergency Services on March 9, 2001 relating to the Landslide Road Failure at Corral Canyon

Staff recommendation: Re-affirm the State of Local Emergency by minute order.

4. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the regular meetings held on July 8, 2002 and July 22, 2002.

5. Completion of Corral Canyon Road Project

Staff recommendation: 1) Accept the work by Calex Engineering on the Corral Canyon Road Reconstruction Project as complete and authorize the City Manager to release all surety agreements and bonds; and 2) Award a contract to Burns Pacific Construction in the amount of \$94,140 for the removal of the stockpiled dirt (4,200 cubic yards) on Corral Canyon Road and reconstruction of two catch basins; 3) Award a contract to Geo Safety, Inc. in the amount of \$4,500 for soil preparation and planting of the newly graded area; 4) Approve an additional payment of \$7,851.91 to Bing Yen & Associates for extra work performed in providing geotechnical oversight of the project grading; 5) Approve payment of a not-to-exceed amount of \$35,000 to Los Angeles Department of Water and Power for the acquisition of necessary rights-of-way for the road improvement; and

- 6) Appropriate \$68,000 to Program 9026 from the Traffic Safety Fund to complete this project.
6. Amendment to Agreement for Design of the Civic Center Stormwater Treatment Facility
Staff recommendation: Authorize the City Manager to execute an amendment to the professional services agreement with Enartec for the lump sum amount of \$30,000 to design connection of the Malibu Road drain to the Civic Center Stormwater Treatment Facility.
7. Purchase of Video/Audio/Lighting Equipment for new City Hall
Staff recommendation: Approve the purchase of new video, audio and lighting equipment for new City Hall Council Chambers.
8. Ordinance Amending Article II of the Municipal Code and Declaring the Urgency Thereof
Staff Recommendation: Adopt Ordinance No. 240U amending Article II of the Municipal Code and declaring the urgency thereof.

The following item was pulled from the Consent Calendar for individual consideration:

9. Destruction of Records
Staff Recommendation: Adopt Resolution No. 02-32, authorizing the destruction of obsolete records.

City Clerk Pope presented the staff report.

In response to Councilmember Barovsky, City Clerk Pope explained the types of files to be destroyed.

MOTION Councilmember Barovsky moved and Councilmember House seconded a motion to adopt Resolution No. 02-32, authorizing the destruction of obsolete records. The motion carried unanimously.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A. First Reading of Ordinance No. 238 Adopting the Malibu Municipal Code
Staff recommendation: After City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 238 adopting the Malibu Municipal Code and direct staff to schedule second reading and adoption on September 9, 2002.

City Clerk Pope presented the staff report.

Mayor Jennings suggested CD-rom versions be available for purchase by the public.

MOTION Councilmember House moved and Councilmember Barovsky seconded a motion to introduce on first reading Ordinance No. 238 adopting the Malibu Municipal Code and direct staff to schedule second reading and adoption on September 9, 2002.

The question was called and the motion carried unanimously.

B. 2002 Congestion Management Program – Compliance with the Congestion Management Program for Los Angeles County and the Adoption of the 2002 Local Implementation Report

Staff recommendation: Adopt Resolution No. 02-33, finding the City in conformance with the Congestion Management Program.

Associate Planner Beebe presented the staff report.

MOTION Councilmember House moved and Councilmember Stern seconded a motion to adopt Resolution No. 02-33, finding the City in conformance with the Congestion Management Program. The motion carried unanimously.

C. Amendment of the Subdivision Ordinance - An amendment of Chapter 10, Section 10.8.03 Procedure (for slope/density exemptions) (Continued from May 28, 2002); Applicant: City of Malibu; Location: Citywide
Staff recommendation: After the City Attorney reads the titles, adopt Ordinance No. 232U and introduce on first reading Ordinance No. 232, an ordinance adopting an amendment to Article X of the Malibu Municipal Code amending Section 10.8.03 Procedure (for slope/density exemptions). Adopt Resolution No. 02-34 approving Negative Declaration No. 02-004, pursuant to California Environmental Quality Act (CEQA).

Associate Planner Beebe presented the staff report.

John Mazza questioned how many new lots would be created by the Subdivision Ordinance. He discussed the potential impact on hillside properties.

Patt Healy, Malibu Coalition for Slow Growth, requested the Council deny the amendment. She stated a focused environmental impact report (EIR) was necessary to find out the significance of the amendment. She discussed the proposed amendments presented by the Coalition for Slow Growth.

Norm Haynie discussed previous comments regarding development on sloping lots. He suggested non-profit owned parcels be eliminated from those parcels in calculating average slope. He stated RR-20 properties should not be included.

Councilmember Barovsky asked why the City would not be pursuing CEQA. Associate Planner Beebe explained that the environmental impact was reviewed

during the general plan process. Councilmember Barovsky reiterated that the General Plan EIR studied the worst-case scenario.

Mayor Jennings explained that the land use designation would govern and lots smaller than the designation could not be created. He explained the means by which revisions to the subdivision ordinance began. He requested staff draw a provision that would limit the effectiveness of relief provision to one time of any given lots created by a subdivision.

CONSENSUS

By consensus, the Council agreed to include a provision limiting the relief provisions to one time.

Mayor Pro Tem Kearsley indicated opposition to the ordinance due to the need for an EIR. He requested that if it does pass to change Section C.2. and C.3. to add “and any applicable LUP”.

MOTION Mayor Pro Tem Kearsley moved and Councilmember Barovsky seconded a motion to amend Section C.2. and C.3. to add “and any applicable certified local coastal program.” The question was called and the motion carried unanimously.

City Attorney Hogin suggested Section C.2. read as follows: “The proposed lot(s) have not been part of a subdivision application granted relief under this provision.”

MOTION Mayor Jennings moved and Mayor Pro Tem Kearsley seconded a motion to amend Ordinance No. 232U by adding Section 2AC6 as follows: “The proposed lot(s) have not been part of a subdivision application granted relief under this provision.” The question was called and the motion carried unanimously.

MOTION Councilmember Barovsky moved and Mayor Jennings seconded a motion to adopt Ordinance No. 232U as amended and introduce on first reading Ordinance No. 232, as amended, an ordinance adopting an amendment to Article X of the Malibu Municipal Code amending Section 10.8.03 Procedure (for slope/density exemptions). Adopt Resolution No. 02-34 approving Negative Declaration No. 02-004, pursuant to California Environmental Quality Act (CEQA). The question was called and the motion carried 4-1, Mayor Pro Tem Kearsley dissenting.

D. General Plan Amendment No. 02-002; Zoning Map Amendment No. 02-002; Negative Declaration No. 02-003 – An Amendment to the Malibu General Plan Land Use Map from Rural Residential 20 to Rural Residential 5, and an Amendment to the Malibu Zoning Map from RR-20 to RR-5, on 68 acres along the North side of Latigo Canyon Road, Approximately 4,000 feet North of the Latigo Canyon / Pacific Coast Highway Intersection; Applicant: City of Malibu;

Settlement: George C. Rubens, as trustee of the George J. Rubens and Yvonne M. Rubens Family Trust, et al, and the City of Malibu

Staff recommendation: Adopt Resolution No. 02-25 approving Negative Declaration No. 02-003 and General Plan Amendment No. 02-002 and introduce on first reading Ordinance No. 241, an ordinance adopting an amendment to Article IX of the Malibu Municipal Code amending Sections 9.2.01 (Interim Zoning Map) approving Zoning Map Amendment No. 02-002

This item was continued upon approval of the agenda.

ITEM 5 OLD BUSINESS

- A. Local Coastal Plan Update – Discussion of the Coastal Commission's July 2002 Land Use Plan and Implementation Program and an Opportunity for Public Input in Order for the City to Evaluate the Potential Affects of the California Coastal Commission's Proposals and Consider its Information and Community Awareness Efforts

Staff recommendation: After public input, continue discussion to the September 9, 2002 City Council Meeting.

City Manager Lichtig presented the staff report.

John Mazza expressed concern regarding ESHA designations particularly in Point Dume. He asked where the September hearing would be held.

Mayor Jennings indicated the meeting would be held at the Westin Hotel in Los Angeles.

Judy Decker expressed concern regarding the excessive ESHA designations.

City Manager Lichtig discussed the efforts and discussions made in regard to Point Dume top of slope, ESHAs, and tide pools.

Mayor Jennings stated Coastal Commission staff had appeared favorable but until the document was presented it was difficult to say.

Councilmember Stern discussed the importance of Point Dume issues.

Councilmember Barovsky asked if the Coastal Commission had been asked why the ESHA designation had been removed from tide pools on Riviera Beaches. City Manager Lichtig stated it was difficult to determine from the maps provided.

City Manager Lichtig reminded the public that bus service would be available for the September hearings.

B. Commission Work Assignments for FY 2002-2003

Staff recommendation: Approve the Commission work assignments for fiscal year 2002-2003.

City Manager Lichtig presented the staff report.

The Council discussed possible changes to the Commission work assignments.

CONSENSUS

By consensus, the Council amended the Commission assignments as follows:

Added Public Safety Commission Assignment:

“6. Investigate and recommend procedures for use of water valve key by public safety officials.”

Added Youth Commission Assignment:

“8. Recommend youths for commendations and outstanding achievement awards.”

Added Parks and Recreation Commission Assignment:

“7. Review and update senior center and provide quarterly assessment.”

C. Council Consideration of a Request from the Applicant to have Staff Expand the Environmental Impact Report (EIR) to Include Two Project Alternatives for the Development Agreement (DA) (Malibu La Paz Ranch, LLC)

Staff recommendation: Direct staff to expand the Environmental Impact Report (EIR) to include a second project alternative for the Development Agreement between the City of Malibu and Malibu La Paz Ranch.

Senior Planner Albright presented the staff report.

Don Schmitz, representing the applicant, explained that the application for the project was a .25 FAR and the City Hall project was .23 FAR. He encouraged the Council to approve the staff recommendation.

Mayor Jennings asked if the applicant paid the \$29,000. Staff indicated that to be correct.

MOTION

Councilmember House moved and Mayor Pro Tem Kearsley seconded a motion to direct staff to expand the Environmental Impact Report (EIR) to include a second project alternative for the Development Agreement between the City of

Malibu and Malibu La Paz Ranch. The question was called and the motion carried unanimously.

ITEM 6 NEW BUSINESS

ITEM 7 COUNCIL ITEMS

ADJOURN At 9:12 p.m., Councilmember House moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of
the City of Malibu on September 23, 2002.

JEFFREY D. JENNINGS, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)